

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMASTEVEN DERHEIM and CHERISE E.  
DERHEIM,

Plaintiffs,

v.

HOMECOMINGS FINANCIAL, et al.,

Defendants.

No. 13-cv-5147-RBL

ORDER

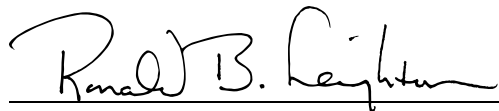
(Dkt. #1)

Plaintiffs have applied to proceed *in forma pauperis* in this action arising from the foreclosure of their property. A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but “the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should “deny leave to proceed *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

1 The Court does not deny *in forma pauperis* status lightly, especially where a homeowner  
2 challenges the impending foreclosure of their property. But the Court must conclude that the  
3 proposed Complaint is frivolous on its face. First, much of Plaintiffs' contentions are based on  
4 the incorrect belief that their lender must produce their original promissory note. This is  
5 incorrect and has been rejected by every court to address it. *See, e.g., Mikhay v. Bank of Am.,*  
6 *NA.*, 2011 WL 167064, \*2-\*3 (W.D. Wash. 2011); *Wright v. Accredited Home Lenders*, 2011  
7 WL 39027 (W.D. Wash. 2011); *Pelzel v. First Saving Bank Northwest*, 2010 WL 3814285, at \*2  
8 (W.D. Wash. 2010); *Wallis v. IndyMac Fed. Bank*, 717 F. Supp. 2d 1195, 1200 (W.D. Wash.  
9 2010); *Freeston v. Bishop, White & Marshall, P.S.*, 2010 WL 1186276, at \*6 (W.D. Wash.  
10 2010). Indeed, the Washington Deed of Trust Act requires that a foreclosing lender demonstrate  
11 its ownership of the underlying note to the trustee, not the borrower. RCW 61.24.030(7).  
12 Second, the remaining allegations fail to support a legal claim. The Complaint contains a  
13 lengthy discussion of the mortgage system, allegations of fraud and conspiracy, and a number of  
14 statutory causes of action. None are supported by factual allegations.

15 For the reasons stated above, the Application to Proceed *In Forma Pauperis* (Dkt. #1) is  
16 **DENIED**. Plaintiffs have **15 days** from the date of this order to pay the filing fees or the case  
17 will be dismissed.

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19 Dated this 13<sup>th</sup> day of March 2013.

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22 RONALD B. LEIGHTON  
23 UNITED STATES DISTRICT JUDGE  
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